STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of M.M., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

TEDDY JOE HARBIN,

Respondent-Appellant,

and

ROZANNE MCCLELLAND,

Respondent.

UNPUBLISHED
July 12, 2002

No. 238126
Gladwin Circuit Court
Family Division
LC No. 00-000135-NA

Before: Hood, P.J., and Saad and E. M. T. Thomas*, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right the October 31, 2001 order terminating his parental rights to the minor child. He argues that the trial court violated MCL 712A.12 by failing to personally serve him with summons. We affirm.

MCL 712A.12, 712A.13 and MCR 5.920(B), 5.921(B) all require personal service of summons on the parent in a child protective proceeding unless the trial court determines that personal service is impracticable, in which case it may order alternate service by mail or publication. Here, respondent-appellant never established his paternity. Accordingly, he was not the child's legal father as defined by MCR 5.903(A)(4) and he was not a parent for purposes of these proceedings as defined by MCR 5.903 (A)(12). Thus, the requirements of MCR 5.920(B)(4) and MCR 5.921(B) do not apply to him. *In re NEGP*, 245 Mich App 126, 134; 626 NW2d 921 (2001); *In re Gillespie*, 197 Mich App 440, 445-446; 496 NW2d 309 (1993). Respondent-appellant's reliance on *In re Adair*, 191 Mich App 710, 713-714; 478 NW2d 667 (1991) is misplaced because that case involved service on a mother, not a putative father.

* Circuit judge, sitting on the Court of Appeals by assignment.

Respondent-appellant further argues that the trial court erred in failing to comply with MCR 5.921(D), which makes special provisions for notice to putative fathers. This subrule outlines certain procedures that a trial court "may" utilize to determine a putative father's identity and serve him with notice of the proceedings. However, this subrule does not require the trial court to utilize such procedures. The language of the court rule is permissive, not mandatory; it states that "the court *may, in its discretion,* take appropriate action as described in this subrule." (Emphasis added.) This Court stated in *People v Seeburger*, 225 Mich App 385, 392-393, 571 NW2d 724 (1997), that "[t]he statutory term 'may' is permissive, as opposed to the term 'shall,' which carries a mandatory, nondiscretionary connotation." The subrule gives the trial court the discretion to implement certain procedures, but it does not require them.

Furthermore, we find no error in the trial court's failure to utilize the procedures suggested by MCR 5.921(D). The trial court twice ordered respondent-appellant to submit to paternity testing, but respondent-appellant disregarded these orders. Thus, respondent-appellant was aware of the proceedings, but failed to take action to establish his paternity and protect his parental rights to the child. Under these circumstances, the trial court did not err in concluding that he was not entitled to personal service of summons.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Edward M. Thomas